

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
Galveston Division

_____)	
TEXAS DEPARTMENT OF CRIMINAL)	
JUSTICE,)	
)	
Plaintiff,)	
)	
v.)	Case No. 3:17-cv-00001
)	
UNITED STATES FOOD AND DRUG)	
ADMINISTRATION, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

PARTIES' JOINT MOTION TO STAY PROCEEDINGS

Pursuant to Rule 7 of the Federal Rules of Civil Procedure, the parties to this action respectfully request that the Court stay all proceedings in this case until April 24, 2017. As we explain below, this stay will promote judicial economy, and is in the parties' interests.

1. On January 3, 2017, plaintiff, the Texas Department of Criminal Justice (TDCJ), filed a Complaint for Declaratory and Injunctive Relief against the United States Food and Drug Administration (FDA), the Commissioner of Food and Drugs in his official capacity, and the United States of America. *See* Compl., Jan. 3, 2017, ECF No. 1. TDCJ alleges that FDA has delayed unreasonably in "determining the admissibility, into domestic commerce, of an import shipment of the drug thiopental sodium." *Id.* ¶ 1. TDCJ represents that it is responsible for administering criminal sentences in Texas and has attempted to import the thiopental sodium to carry out capital sentences through lethal injection, and seeks a mandatory injunction compelling FDA to issue a final decision on the admissibility of the thiopental sodium offered for importation. Compl. at 16.

2. FDA is subject to a court order permanently enjoining the agency from permitting the entry of any shipment of foreign-manufactured thiopental that appears to be misbranded or an unapproved new drug. *See Beaty v. FDA*, 853 F. Supp. 2d 30 (D.D.C. 2012), *aff'd in part, rev'd in part sub nom. Cook v. FDA*, 733 F.3d 1 (D.C. Cir. 2013). TDCJ maintains that the thiopental sodium that it seeks to import is neither misbranded nor an unapproved new drug. FDA is in the process of determining the admissibility of the shipment of thiopental sodium that TDCJ wishes to import.

3. FDA has now determined—and informed TDCJ—that it will issue a final determination on the admissibility of the shipment of thiopental sodium on or before April 20, 2017. FDA also has determined—and informed TDCJ—that this final determination will be a final agency action, ripe for judicial review. Based on FDA's representations as to the timing and finality of the forthcoming admissibility decision, it appears that once FDA issues the decision, TDCJ will have obtained all the relief it is seeking in this lawsuit, and the current claim in the lawsuit will therefore become moot.

4. Given that it appears that FDA's actions will soon moot the current claim in this case, the parties and the Court need not expend further resources on this matter. A stay until April 24, 2017, allowing the FDA to issue a decision on the import entry, will save the Court's and the parties' resources, and promote the expeditious resolution of the current dispute.

5. The Court has issued an order for an April 3, 2017 hearing on TDCJ's motion to compel (Dkt. No. 19). The Court also has issued an Order for Conference and Disclosure of Interested Parties (Dkt. No. 3), which sets an initial pretrial and scheduling conference for April 26, 2017 at 9:00am. The parties request that both of these appearances be postponed.

6. On or before April 24, 2017, TDCJ will file a report with the Court stating whether TDCJ intends to voluntarily dismiss the case or whether TDCJ intends to file an amended complaint. Defendants recognize that, prior to the filing of an answer, a responsive pleading, or a motion under Rule 12(b), (e), or (f), TDCJ may amend its complaint as a matter of course; should TDCJ elect to amend its complaint, Defendants do not concede any defenses that may be raised in response.

For these reasons, the parties jointly request that the Court stay all further proceedings in this case until April 24, 2017.

Respectfully submitted,

s/ Daniel G. Jarcho
Daniel G. Jarcho, Attorney in Charge
Tamara R. Tenney
ALSTON & BIRD LLP
950 F Street, N.W.
Washington, D.C. 20004
(202) 239-3254 (telephone)
(202) 239-3333 (fax)

Edward L. Marshall
Chief, Criminal Appeals Division
State Bar No. 00797004
S.D. Tex. Bar No. 22642
Matthew Ottoway
Assistant Attorney General
State Bar No. 24047707
S.D. Tex. Bar No. 892308
Texas Attorney General's Office
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 936-2891 (telephone)
(512) 320-8132 (fax)

Counsel for Plaintiff

CHAD A. READLER
Acting Assistant Attorney General

MICHAEL S. BLUME
Director

ANDREW E. CLARK
Assistant Director

s/ Alexander V. Sverdlov
ALEXANDER V. SVERDLOV
Trial Attorney
Consumer Protection Branch
Civil Division
U.S. Department of Justice
P.O. Box 386
Ben Franklin Station
Washington, DC 20044
Tel: (202) 307-0138
Fax: (202) 514-8742

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on this 27th day of February, 2017, a copy of the foregoing “PARTIES’ JOINT MOTION TO STAY PROCEEDINGS” was filed electronically. This filing was served electronically to all parties by operation of the Court’s electronic filing system.

s/ Alexander V. Sverdlov

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[PROPOSED] STAY ORDER

Upon consideration of the parties' Joint Motion to Stay Proceedings, it is hereby ORDERED that this matter is stayed until April 24, 2017. FDA shall issue its final determination as to the admissibility of the disputed import on or before April 20, 2017. On or before April 24, 2017, TDCJ shall file a report stating whether TDCJ intends to voluntarily dismiss this case or file an amended complaint. The hearing on the motion to compel set for April 3, 2017 and the pretrial and scheduling conference set for April 26, 2017 are postponed until further order of the Court.

DATED: _____

HON. GEORGE C. HANKS, JR.
United States District Judge